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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,547	07/25/2003	David L. Bauer	5053.00009	3536

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EXAMINER

PATEL, JAGDISH

ART UNIT PAPER NUMBER

3624

DATE MAILED: 11/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/627,547	<b>Applicant(s)</b> BAUER ET AL.	
	<b>Examiner</b> JAGDISH PATEL	<b>Art Unit</b> 3624	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 August 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-15,17-30,32 and 33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-15,17-30,32 and 33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. This communication is in response to amendment filed 8/15/05.

#### *Response to Amendment*

2. Claims 1,4-5, 8-11, 15, 17, 19-25, 29-30 and 32 have been amended and new claim 33 has been added. Claims 2, 16, and 31 have been canceled.

#### *Response to Arguments*

3. Rejection of claims 1-32 under 35 USC §101

Rejection of claims 15-28 under 35 USC 101 has been withdrawn. It is noted the USPTO no longer require the claimed invention within “technological art”. (see recent ruling by the Board of Patent Appeals and Interferences (Ex parte CARL A. LUNDGREN)).

Rejection of claims 1 and 3-14 under 35 USC 101 are maintained

Rejection of claims 1-14 under 35 USC §101 has been maintained because the as previously stated the claim as recited does not fall in any statutory class of inventions under 35 U.S.C. §101 which requires that in order to be patentable the invention must be a *new and useful process, machine, manufacture or composition of matter or new and useful improvement thereof* (emphasis added). Applicant’s claims mentioned above are intended to embrace a system or apparatus (“An online auction server system), however there are no elements of a server system recited in the body of the claim. The latter recites an auction service having a preliminary bidding component conducted over a computer network ..and a dynamic real-time auction component over the computer network .. The claims are clearly to an auction service having the aforementioned components, one being preliminary bidding and the second being a dynamic bidding which does not fall into any one of the aforementioned statutory classes and therefore, the claims are directed to non-statutory subject matter under 35 USC §101.

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Note that 2-14 are dependent claims from claim 1, therefore stand rejected under 35 USC §101 for the same reasons as applicable to claim 1.

Newly added claim 33 is rejected under 35 USC §101 as per reasons provided above.

Applicant's arguments with respect to claims 15, 29 and dependent claims have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-14, 20, 27-30 and 32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per discussion of claims 1-14 under 35 USC 101 rejection the claims' statutory class cannot be determined which renders the claims indefinite.

Claim 20 recites, "resetting the countdown timer in response to each dynamic bid". There is insufficient antecedent basis in the claim for limitation "the countdown timer". Assuming that claim 20 depends upon claim 19, which recites that the countdown timer indicates time remaining until the item can no longer be bid on. Therefore, the countdown timer remains running until the item can no longer be bid on which contrast with claim 20 recitation which suggests that the timer rests in response to each bid.

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6. Claim 27 recites “treating bids in excess of a pre-established bid increment as proxy bid” does not relate to any limitation and therefore in light of the method steps recited in claim 15 the scope of proxy bid cannot be ascertained. Additionally, claim 15 recites “preliminary bids” and “real-time bidding”. It is unclear which of these bids claim 27 refers to.

Claim 28. is rendered indefinite because there is no antecedent basis for “proxy bids placed during the preliminary bidding”.

7. Independent claim 29 recites “conducting a second real-time virtual auction offering the plurality of items *whereby a successful second auction portion bid will be greater the final first auction portion high bid*” and “*resulting in the final successful bid being one of a final first auction portion high bid and a second auction portion*” (emphasis added). In this recitation the outcome of the second auction portion with certainty in a narrative form without specifying any process which causes the stated outcome (i.e. a successful second bid) having this degree of certainty.

Claims 30 and 32 depend upon claim 29.

Claim 32 recites limitation “the second auction portion countdown timer” which lacks sufficient antecedent basis in the claim.

Appropriate corrections are required to resolve the deficiencies outlined in the foregoing paragraphs.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claim 15 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Alaia et al. (US 6216114) (hereafter “Alaia”).

Per claim 15 Alaia discloses a method of conducting an auction over a computer network comprising:

Offering over the network a preliminary bidding on items whereby a plurality of items is offered for auction, each item being offered for a pre-established time period;

(refer to col. 4 L 15+ “conduct of an Auction”, lots of products offered for auction are assigned a scheduled closing time);

accepting preliminary bids resulting in a final preliminary bid, a final successful bid being at least equal to the final preliminary bid;

(see steps 510, 520 and 530, any bids received prior to triggering of the overtime interval, form a preliminary bid)

offering over the network a dynamic real-time bidding for each of the items upon expiration of said pre-established time period ;

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(refer to the component of the auction performed after closing time, i.e. when the auction is extended based upon bids or bidders of a defined rank behind market, see col. 3-11, see also col. 11 L 50+ and Figure 11, the dynamic real-time component is that component of the auction carried out in response to the step 530 causing steps 560, 570, 560 to be performed and subsequently repeating the auction until no “trigger bid” is received at step 530).

Method claim 15 is analyzed as per corresponding system claim 1.

determining whether there is at least one dynamic bid during the dynamic real-time bidding greater than the final preliminary bidding;

identifying the final successful bid as one of the final preliminary bid and the at least one dynamic bid.

(see step 530 “trigger bid”, see further explanation of the trigger bid at col. 14 L 1-9, “triggered bid” must have a price ..higher than from the current best bid)

Claim 21: alerting bidders prior to the real-time bidding of each item  
(see Figure 6C “OVERTIME” status indicator, see also col. 4 L 26-42, “Overtime”).

### ***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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11. Claims 22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alaia as applied to claim 15 and further in view of well known practices of messaging in the art of communication.

Claims 22-26 recite various method of communicating messages which form alerts to bidders.

Official Notice is taken that alerting users via audible signal, via telephone (automatic or manual dialing), instant message, page alert and electronic mail are old and well known in the art of message communication.

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to implement one more methods of message communication as deemed most efficient and convenient to the bidder.

12. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Alaia as applied to claim 15 and further in view of Fisher et al. (US 5,835,896) (Fisher).

Alaia fails to disclose, however, Fisher in the same field of endeavor, teaches accepting proxy bids and automatically increasing a proxy bidders current bid by a minimum amount in response to a higher bid ..until a maximum proxy bid has been achieved.

(see col. 9 L 18-34, "proxy bid")

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to incorporate these functions in the cited reference in order that the auction is more appealing to the participants, reduce burden on the bidders for incrementing bids by allowing the system to adjust bids according to pre-established rules set by the bidders and remind the bidders to the auction closing as it approaches the closing time.



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13. Claims 19, 29 and 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Alaia as applied to claim 15 and further in view of Godin et al. (US 5,890,138) (Godin).

Alaia fails to disclose, however, Godin in the same field of endeavor, teaches displaying a count down timer on a screen ...

(see Figure 10 for example, see item labeled "time left" 146).

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to incorporate this feature because it would enable the bidder to quickly enter bids in a timely fashion and allow to react to the changes in the bidding environment.

Claim 29 is analyzed as per claim 19.

Claim 30 is analyzed as per claim 21 and 19 combined.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be

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calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAGDISH PATEL whose telephone number is (571) 272-6748. The examiner can normally be reached on 800AM-600PM M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is 517-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jagdish N. Patel

(Primary Examiner, AU 3624)

10/28/05